

Letters of Findings Numbers: 02-20120334P; 02-20120608P
Penalty
For the Periods 2010 and 2011

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ISSUE

I. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-2.1(d); IC § 6-8.1-5-1(c); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of proposed penalties.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Taxpayer failed to timely file returns required by the Department. Taxpayer was assessed a penalty for 2010 and 2011. Taxpayer filed a protest regarding the penalty. A telephone hearing was held, and this Letter of Findings results. More facts will be provided below as needed.

I. Tax Administration—Penalty.

DISCUSSION

Under IC § 6-8.1-5-1(c) the Department's proposed assessments (in this instance, the penalties), are presumed to be correct. Regarding the penalties, IC § 6-8.1-10-2.1(g) states:

(g) A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

Taxpayer was assessed penalties under IC § 6-8.1-10-2.1(g) for tax years 2010 and 2011. Taxpayer argues that the penalties should be waived. Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1(d). The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer argues that it had reasonable cause for failing to timely file the returns based upon the fact that Taxpayer was in bankruptcy. Taxpayer states that his accountant had his pertinent paperwork, and that the accountant would not turn over the information to Taxpayer. Taxpayer states that Taxpayer "had to have my bankruptcy attorney and trustee threaten legal action against the accounting firm to get my returns." Taxpayer provided the Department with a copy of a letter that was sent from Taxpayer's attorney to Taxpayer's accountant. The letter, in part, requests Taxpayer's "documentation and the records...." Based upon the information Taxpayer has provided, the Department finds that Taxpayer has established reasonable cause under [45 IAC 15-11-2](#).

FINDING

Taxpayer's protest is sustained.

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